

Applicant respectfully points out that Claims 1, 19, 21, 24-27, 33, 51, 53, 56-59, 65, 83, 85, 88-91 and 108-109 are common to all Figures 2-13.

Listing of Claims reading on each individual group:

Group A (FIGS. 2, 4 and 5): Claims 1-7, 15-21, 24-30, 32-39, 47-53, 56-62, 64-71, 79-85,
(Elected Group) 88-94, 96, and 108-109.

Group B (FIG. 3): Claims 1-6, 8, 15-21, 24-27, 32-38, 40, 47-53, 56-59, 64-70,
72, 79-85, 88-91, 96, and 108-109.

Group C (FIG. 6) 1-5, 9-10, 12-13, 15-17, 19-21, 24-27, 32-37, 41-42, 44-45, 47-
49, 51-53, 56-59, 64-69, 73-74, 76-77, 79-81, 83-85, 88-91, 96,
and 108-109.

Group D (FIG. 7) 1-7, 15, 17, 19-21, 24-30, 32-39, 47, 49, 51-53, 56-62, 64-71,
79, 81, 83-85, 88-94, 96, and 108-109.

Group E (FIG. 8A) 1-5, 9-10, 12-13, 15-17, 19-21, 24-27, 32-37, 41-42, 44-45, 47-
49, 51-53, 56-59, 64-69, 73-74, 76-77, 79-81, 83-85, 88-91, 96,
and 108-109.

Group F (FIG. 8B) 1-5, 9, 11-13, 15-17, 19-21, 24-27, 32-37, 41, 43-45, 47-49, 51-
53, 56-59, 64-69, 73, 75-77, 79-81, 83-85, 88-91, 96, and 108-
109.

Group G (FIG. 9) 1-7, 15-27, 32-39, 47-59, 64-71, 79-91, 96, and 108-109.

Group H (FIG. 10) 1-3, 14-21, 24-27, 32-35, 46-53, 56-59, 64-67, 78-85, 88-91,
96-99, and 108-109.

Group J (FIG. 11)	1, 19, 21, 24-27, 31, 33, 51, 53, 56-59, 63, 65, 83, 85, 88-91, 95, 97, 100, and 108-109.
Group K (FIG. 12)	1-3, 14-21, 24-27, 32-35, 46-53, 56-59, 64-67, 78-85, 88-91, 96, and 108-109.
Group L (FIG. 13)	1-5, 9-10, 12, 15, 17, 19-21, 24-27, 32-37, 41-42, 44, 47, 49, 51-53, 56-59, 64-69, 73-74, 76, 79, 81, 83-85, 88-91, 96, and 108-109.

MPEP § 816 states “The particular reasons relied on by the examiner for holding that the inventions as claimed are either independent or distinct should be concisely stated. A mere statement of conclusion is inadequate.” MPEP 803 requires a “serious burden on the examiner if restriction is required”, wherein the examiner “must provide reasons and/or examples to support conclusions ...”. Applicant respectfully submits that Examiner cannot impermissibly shift the burden of analysis to Applicant.

Applicant respectfully asserts that Examiner has not provided reasons and/or examples to support Examiner’s conclusions. MPEP § 803. Additionally, Examiner has not shown, via appropriate explanation of separate classification, or separate status in the art, or a different field of search, that a serious burden will be imposed upon Examiner during examination of Applicant’s invention. *Id.* Instead, Examiner has merely imposed an election/restriction requirement upon Applicant - without any explanation or showing of cause – and has advised Applicant that an election may be made with traverse. Accordingly, Applicant is burdened with making an election without fully understanding Examiner’s reasons in support of Examiner’s conclusion, and as such, is disadvantaged in his attempts to articulate a rational and cogent argument in support of Applicant’s traversal to same.

Furthermore, in the absence of Examiner citing relevant classification and sub-classifications for the species cited in the Election/Restriction Requirement, Applicant cannot ascertain the nature of the variants/species in view of the art, nor can Applicant ascertain whether it would place undue burden upon Examiner in the examination of Applicant's invention as a whole.

Nonetheless, Applicant respectfully asserts that all Independent Claims 1, 33, 65 and 108 are sufficiently broad to encompass all disclosed and claimed embodiments of Applicant's invention. Applicant does not know at this time whether the species identified by Examiner are patentably distinct over prior art. Applicant respectfully notes that mere placement of Applicant's bag opening is likely not patentably distinct, but rather results in variations of Applicant's single invention as contemplated within the relevant classes and subclasses. Applicant believes that the rectangular and round/tubular openings are patentably distinct and asserts that such are sufficiently linked via claims 1, 33, 65 and/or 108. Additionally, Applicant's disclosed and claimed bags with openings therein share common elements and features recited in Applicants' Independent Claims, and further defined and limited in Applicants' Dependent Claims. Nonetheless, Applicants' Independent Claims 1, 33, 65 and 108 are still generic enough to encompass all such bag with opening embodiments of Applicants' invention.

Many of the several groups of drawings restricted by Examiner are merely views or versions of similar or exactly the same device, and others are mere minor variations that would be covered in the same search. Particularly, Figures 2, 3, 4, 5, 7, 9 and 12 are essentially all variations of a bag with a rectangular opening on top. Figures 6, 8A, 8B and 13 similarly are a bag with a tube replacing the opening on top. Figures 10 and 11 depict similar bags with inflatable sections.

Accordingly, Applicant respectfully requests that Examiner reconsider and withdraw the election/restriction requirement in view of the foregoing arguments.

CONCLUSION

The above election is to form, and, thus, no new matter was added.

In light of the election, Applicant respectfully submits that Claims 1-100, 108 and 109 are now allowable.

Otherwise, should the Examiner have any questions regarding this submission, he is invited to contact the undersigned counsel at the address or telephone number below.

Respectfully submitted, this 3rd day of September, 2004,



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